IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7097 OF 2004

Prakash Motiram Shelke ... Petitioner

versus

Radheshyam Tikaram Sharma ... Respondent

...

Mr. Sandesh D. Patil, for the Petitioner.

...

CORAM : A.M.KHANWILKAR,J.

3rd September 2004

P.C.:

. Heard Counsel for the Petitioner. Rule. Rule made returnable forthwith. For the nature of order that I propose to pass, presence of the Respondent will make no difference. To avoid further delay and also to avoid cost of litigation to be suffered by the Respondent, notice to the Respondent is dispensed with. As short question is involved, petition taken up for final disposal forthwith.

. The sole question that arises for

consideration in the present writ petition is whether the Court below was justified in observing that it has no jurisdiction to permit the presentation of written statement by the Defendant after the expiry of 90 days in view of the recent amendment to the provisions of the C.P.C. This is the only basis on which the written statement tendered on behalf of the Petitioner has been refused to be taken on record. Indeed, the trial Court has adverted to the decision of the Apex Court reported in (2002) 6 SCC 33 in the case of Topline Shoes Ltd. v. Corporation Bank. However, that decision has been considered in the recent decision of Division Bench of our High Court (unreported) in Writ Petition No. 2847 of 2004 in the case of Chintaman Sukhdeo KJaklij and ors. v. Shivaji Bhausaheb Gadhe and ors. and other companion cases and the Division Bench has taken a view that the provision is discretionary and it is open to the Court to take the written statement on record even after expiry of 90 days, if sufficient cause is made out for the delay by the defendant. In view of the recent decision of Division Bench of our High Court, the view taken in the impugned judgment cannot be sustained. As

the trial Court has not considered whether sufficient cause has been made out by the defendant, the appropriate course is to relegate the parties before the trial Court for reconsideration of the application on its own merits in accordance with law. Accordingly, this petition succeeds. The impugned decision dated 6th July 2004 passed in Application in M.A. No. 152 of 2003 is set aside and the said application is restored to the file of the trial Court for reconsideration in the light of the observations of the Division Bench of this Court in the unreported decision referred to above. The application be decided as expeditiously as possible, preferably within four weeks from the receipt of writ of this Court or on production of authenticated copy of this order. Till the said application is decided, the trial of the suit shall not proceed further.

(A.M.KHANWILKAR,J.)